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FILED
JAN 7 1966
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 886

WILLIAM C. BARNES,
Petitioner

v.

REDERI A/B FREDRIKA, Defendant and Third-Party Plaintiff, and ATLANTIC & GULF STEVEDORES, INC., Third-Party Defendant

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Printed by TEAGLE & LITTLE, INC., Norfolk, Va.

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TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, William C. Barnes respectfully prays that a Writ of Certiorari issue to review the final judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above-entitled matter on September 9, 1965.

OPINIONS OF THE COURTS BELOW

No opinion was filed by the District Court for the Eastern District of Virginia. The opinion of the Court of Appeals for The Fourth Circuit is reported at 350 F. 2d 865 (infra. pp. 1a).

JURISDICTION

The judgment of the Court of Appeals was entered on September 9, 1965 (infra, pp. 7a). The jurisdiction of this Court is invoked under 28 U.S.C.A. §1245 (1).

QUESTION PRESENTED

Where a longshoreman is a member of a gang that is in the process of loading and discharging cargo does the shipowner owe him an absolute duty to provide a seaworthy vessel?

STATEMENT OF THE CASE

On March 22, 1963, the date that William Barnes was injured he was employed by the Stevedore in the capacity of a longshoreman for the purpose of assisting with cargo handling operations aboard the S.S. DOROTEA. Barnes went on board the vessel at approximately 1:00 P.M., on the date of his injury and subsequently proceeded to discharge cargo from number four hatch. At this time he was working on the off-shore side of the vessel. After the work had been completed in number four hold it was discovered that some cargo which had not been designated for the port of Norfolk, Virginia, had been unloaded by mistake. The longshoremen, including Barnes were ordered to

go back into the number four hold in the 'tween deck area where bales of wool would be reloaded. Barnes climbed down the ladder and while proceeding to his general working area he fell into the number five lower hold from the 'tween deck level. In proceeding to his working area he walked around some cargo that was stowed between the number four and number five holds. The distance from the opening of the number four hold to the opening of the number five hold was approximately nineteen feet.

The area around the number five hold was dark since the hold was closed on the main deck level and all hatch boards secured on that deck. Although there were bulkheads between the number four and number three holds, there was no bulkhead between the number four and number five holds. At least two hatch boards from the number five 'tween deck area where Barnes fell had previously been removed without any warning or notification to the Stevedore, the hatch boss or Barnes.

Suit was brought by Barnes and in that action the Court submitted the case to the jury solely on the issue of unseaworthiness, the negligence count of the complaint having been withdrawn on the day of trial. The trial court in its charge to the jury in part stated that if the longshoreman was in a part of the ship where he had no right to be and where the shipowner could not reasonably anticipate or expect him to be then the warranty of seaworthiness would not extend to him.

The jury rendered a verdict for the Shipowner.

The Court of Appeals in a unanimous decision

affirmed saying that confining the duty of maintaining a seaworthy vessel to the reasonable scope of the longshoreman's activity is logical and correct in principle. Fully acknowledged as an obligee of the ship's duty, nevertheless the longshoreman's due should not exceed the need for his protection as measured by his function on the vessel. The Court said further that he is not subject to momentary orders, as is a crewman, to any part of the vessel whatsoever, and his presence at a location unconnected with his task is not to be anticipated.

REASONS RELIED ON FOR ALLOWANCE OF WRIT

The decision below that a ship owner is Not Liable for Injuries Sustained by a Longshoreman if he is in a Place on the Vessel Where he Could not be Reasonably Expected to Go is in Conflict With the Ruling of This Court in *Seas Shipping Company* v. *Sieracki,* 328 U.S. 85 holding, without any Limitation, that Liability for Unseaworthiness was Extended to Longshoremen.

The crucial issue is whether or not a ship owner is liable for the unseaworthiness of a vessel and for the injuries sustained by a longshoreman only when he is where he might reasonably be expected to be, which to this writer connotes a co-mingling of negligence and unseaworthiness theories, or whether the ship-owner has an absolute duty to furnish the longshoreman with a seaworthy vessel. It is respectfully submitted that when this Honorable Court extended the doctrine of unseaworthiness to include and benefit longshoremen in *Seas Shipping Co., Inc.,* v. *Sieracki,* 328 U.S. 85, 66 S.Ct. 872 that no mention was made, or inferences

raised that this doctrine of unseaworthiness, which places an absolute duty on the shipowner, was to be whittled down and severely restricted *even after* the maritime worker came aboard the vessel for the benefit of the ship-owner. It is of course recognized that the ship-owner is not an insurer of the safety of the longshoreman, nor do we ask that he be an insurer, but, what we do ask is that once the sanctuary of a seaworthy vessel is extended to the longshoreman that what was once an absolute duty be not diluted by theories of negligence. The only circuit to take away from the longshoremen what was given to them in the *Sieracki* case is the second circuit in *Calderola* v. *Cunard S.S. Co.* 279 F.2d. 475 (2 Cir. 1960) cert. den. 364 U.S. 884 which this writer respectfully submits was erroneously founded on the eariler second circuit case of *Lauricella* v. *United States,* 185 F.2d 327 (2 Cir. 1950) which was a negligence case. This matter is one of utmost importance to a longshoreman who is on the vessel by the shpiowner's invitation and with his permission, for if this case is allowed to stand who is to say how far a longshoreman can go to smoke a cigarette or where he might go to seek out a bathroom.

CONCLUSION

The present decision rocks the very foundation established in the *Sieracki* case of the absolute duty of a shipowner to furnish a longshoreman with a seaworthy vessel. No longer can a longshoreman who comes aboard a shipowner's vessel by invitation and with his permission be certain that the absolute duty placed on the shipowner will extend to him once a factual question is allowed to be raised.

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,
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